

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

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**Nadine Gazzola**, individually, and as co-owner,  
President, and as BATFE Federal Firearms Licensee  
Responsible Person for **Zero Tolerance**  
**Manufacturing, Inc.**; *et al.*

**Civ. No.: 1:22-cv-1134 (BKS/DJS)**

*Plaintiffs*

v.

**KATHLEEN HOCHUL**, in her Official Capacity as  
Governor of the State of New York; *et al.*

*Defendants*

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**DECLARATION OF PLAINTIFF  
MICHAEL MASTROGIOVANNI – SPUR SHOOTERS SUPPLY**

1. I am Michael Mastrogiovanni and I make this Declaration under penalties of perjury.  
  
These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. I oppose all laws complained of in this case. I submit this “Declaration” to highlight certain of my background, credentials, employment, licenses, and relevant experience.  
  
I reserve the right to submit such further declarations, testimony, and exhibits as may be necessary to support our claims.
3. Footnotes within this document that provide citation of law are inserted by Counsel.  
  
I attest that I am, independent of Counsel and prior to this lawsuit, familiar with such laws, as stated, discussed, and argued herein. Legal citations are being provided as a courtesy to the Court due to the complexity of this case.

4. I am not a “disqualified person,” as this term is defined under 18 U.S.C. §922(g).
5. **Background and Business.** I am the Sole Proprietor of “Spur Shooters Supply,” a New York business. The business premises is located in my home in Syracuse, Onondaga County, New York.
6. I am the “Responsible Person”<sup>1</sup> for a Federal Firearms License, Type-01, Dealer in Firearms. I have a comparable license from New York State, issued through Onondaga County. I have also a NYS Sales Tax number for the collection and reporting of sales tax.
7. In addition to my business inventory, I also own personal firearms of all types. And I have, since 1982, had an unrestricted concealed carry permit issued by Onondaga County. The list of handguns on that license is current.<sup>2</sup>
8. I have used firearms for more than fifty years, beginning when I was about twelve years old and started learning using a .22 rifle.
9. **FFL Dealer in Firearms.** I started “Spur Shooters Supply” in 1992 to help competitive shooters obtain firearms, as well as to generally buy and sell firearms.
10. I sell what may be referred to, generally, as AR/AK/“tactical” firearms.
  - a. The “AR” (standing for Arma-Lite) is a lightweight, semi-automatic rifle, known in the industry as “the most popular rifle in America.” It is also referred to as “the modern sporting rifle.”

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<sup>1</sup> “Responsible Person” is defined by BATFE on Form 7, “Definitions,” as “In addition to a Sole Proprietor, a Responsible Person is, in the case of a Corporation, Partnership, or Association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the Corporation, Partnership, or Association, insofar as they pertain to firearms.”

<sup>2</sup> Attorney of Record note: I am not providing the detail level in these public documents as is available from the Co-Plaintiffs in the interest of their personal safety.

- b. The “AK” platform is the “Kalashnikov” or “Russian” platform equivalent, although better described as “medium weight.” This is the choice of biathletes, particularly as manufactured by Anschutz. It is also a semi-automatic rifle.
  - c. Either rifle may be referred to as a “tactical rifle,” meaning
- 11. I also sell AR firearms parts and accessories, and gun cleaning kits and supplies.
- 12. Having been in business since 1992 – thirty years – and, myself, being a regular competition shooter, including traveling to competition sites around New York, Pennsylvania, and Ohio, I have developed a fairly specialized customer base of fellow competition shooters.
- 13. As such, I have a very small inventory of firearms, plus or minus fifty, on a given day. My customers use their firearms for hunting, target practice, self-protection, and shooting sports. In some cases, I assist with legacy firearms from estates.
- 14. In addition to sales conducted at my business premises, I also participate as an FFL at “The Syracuse Gun Show,” held annually at the NYS Fairgrounds in Syracuse, NY. At federal law, an FFL-01 is permitted also to sell at a gun show in the state of their license.<sup>3</sup> All requirements are identical, from the A&D Book entries to the NICS background checks.
- 15. Most of my sales are FFL-to-FFL transfers.<sup>4</sup> The sequence is as follows:
  - a. For example, one of my local customers may be traveling out-of-state and selects a firearm from another FFL dealer or directly from a manufacturer or importer, which the local customer directs be shipped to me. This is also true for a customer

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<sup>3</sup> 18 U.S.C. §923(j).

<sup>4</sup> 27 CFR §§478.122, 478.123, 478.125.

- conducting an internet purchase of a firearm from an out-of-state dealer.
- b. The out-of-state FFL and I connect and exchange our FFL certificates to record in our A&D books.
  - c. The out-of-state FFL takes payment from the customer and is responsible under federal law for shipping.
  - d. Upon my receipt of the firearm, I become responsible for it and record it into my A&D book as coming into my inventory.
  - e. I then check any required license from the customer and run his background check, prior to releasing the firearm from inventory to the customer. If a customer either fails to have the required license or receives a “DELAY” or “DENY” from the ATF on the NICS background check, I am required to hold that firearm in my inventory.
16. I am a one-man operation. I do not have employees. My inventory is secured in two rooms of my house, which is, itself, secured. I already use two safes for storage of at least some inventory, as well as my personal firearms.
17. I have the sole responsibility for customer interface and sales, as well as inventory reconciliation.
18. My customers come from all walks of life. Pulling from both my business and personal interests, I would say amateur competition shooters come in all forms of gender, age, ethnicity, occupation, experience, and level of amateur sports commitment. They may enjoy 3-gun tactical shooting competitions, which test marksmanship and agility across three, different firearms. They may benchrest.
19. Part of my value-add for customers is my own experience in the shooting sports. I know a

significant number of manufacturers and models. I have personally shot many. I can assist with matching a shooter's goals with an appropriate make and model of firearm.

20. Among the parts I sell is what is referred to in the industry as "100% lower receivers" (a/k/a "stripped lowers"). This is a part made by a federally-licensed manufacturer which bears a factory serial number, model, caliber or gauge, manufacturer name, and, in the case of a domestic manufacturer also the city and state, or, in the case of a foreign manufacturer, the country of origin and the city and state of the importer, all of which is required by federal law.<sup>5</sup>
- a. I am familiar with the recent ATF "Final Rule,"<sup>6</sup> which set forth the agency's final definition of a "frame or receiver" for mechanical distinctions between an "80% lower receiver" and a "100% lower receiver."
  - b. I do not sell any "80% lower receivers.
  - c. I do not inventory or sell any unmarked lower receivers.
  - d. I was already in compliance with this ATF Final Rule prior to its issuance.
21. Less than five percent of my sales are ammunition that is new-in-box.
22. In addition, I devote a considerable amount of my personal time to ammunition and ammunition reloading. I take great pride in my ability to achieve grain purity and generally compete with only my own ammunition.

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<sup>5</sup> See, 26 U.S.C. §5842(a), "Identification of firearms." See, also, 27 CFR §478.92 for corresponding regulations and 27 CFR §479.102 relative, specifically, to markings for NFA firearms. Further, under 18 U.S.C. §922(k) it is illegal for a firearms dealer to knowingly sell a firearm with a serial number that has been removed, obliterated, or altered.

<sup>6</sup> See ATF "Final Rule 2021R-05F," "Definition of "Frame or Receiver" and identification of Firearms," at <https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver/summary>.

23. Ammunition reloading does not require a license, either federal or state. This is a particular skill I enjoy sharing and teaching, particularly to competition shooters.
24. Finally, I also sell related parts, scopes, trigger locks, cases, and cleaning solvents.
25. **The Impact of the New Laws, Generally.** If we do not achieve an immediate Temporary Restraining Order, I am going to have to seriously consider closing my business as of December 5, 2022. Multiple of the new laws are illegal under federal law. Many others are an unconstitutional regulatory overload. I have no question that the firearms dealer industry was targeted through these new laws by the Defendants with the intention to knock out as many dealers as possible, including me. I'm caught between the rock and the hard place: to challenge these Defendants is to risk being targeted and losing my license. To do nothing is to face either federal or state criminal charges due to the impossibility of complying with both sets of laws, concurrently, as of December 5, 2022. To do nothing? Probably the worst choice of all, resulting in a total compliance failure.

**The Impact of the New Laws:**

**Chaos Among the Counties Impacting the Industry and the Individual**

26. Historically, New York has not required any (zero) firearms training as part of a concealed carry permit. For more than 100 years, the NY Sullivan Act did not require either classroom or live-fire training, testing, or certificates of completion of the same. There is no precedent in NY for the new mandatory training.
27. Practically speaking, the Defendants have failed to fulfill their own agency mandates, which has resulted in confusion and backlog at the county level. Historically, the Counties have been left on their own to decide any training requirements. In general, if a course was required, a county would default to the 4-hour NRA or UCCA course, which did mean that

there was a fairly uniform curriculum. Not all counties required training, even as of August 31, 2022.

28. Now, I'm starting to see county-level variations. I'll highlight what Onondaga County is doing, just as of October 24, 2022:
- a. No County of which I am aware is offering a separate SAR license.
  - b. Some counties, like Onondaga County, are excusing concealed carry permit holders from obtaining a separate semi-automatic rifle license and allowing them to add the SAR "license" to their concealed carry permit, even though they highlight the very line on the NYS Police PPB-5 form<sup>7</sup> that says "Semi-automatic License Number."<sup>8</sup>
  - c. Some counties, like Onondaga County are, as of October 24, 2022, published a list of "approved" instructors for the 18-hour course, but without any explanation of how they made this legal determination.<sup>9</sup>
29. We Plaintiffs, who are dealers, however, are pinned. We are prohibited from selling a semi-automatic rifle to a customer who cannot produce an SAR license.<sup>10</sup> But when it comes to the concealed carry license, we won't know how the license was obtained, only whether the customer presents a valid license.
30. There is nothing at law that appears to allow the concealed carry permit holder to add an

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<sup>7</sup> The NYS Police PPB-5 form is attached as an Exhibit to this Motion.

<sup>8</sup> Onondaga County Sheriff's Office, Pistol License Unit, question and answer #17 with click-through to downloadable form on website page at <https://sheriff.ongov.net/pistol-license-unit/>. This is attached as an Exhibit to this Motion.

<sup>9</sup> Onondaga County Sheriff's Office, Pistol License Unit website page at <https://sheriff.ongov.net/pistol-license-unit/>. This is attached as an Exhibit to this Motion.

<sup>10</sup> NY Pen §265.66.

SAR to their permit, which means we, as dealers, cannot release the SAR to the customer.

There is so much confusion over the new laws regarding training and licensing that the Defendants have thrown the entire system for counties and Plaintiffs, alike, into a chaos of argument over interpretation of laws that could result in the arrest of both the customer and the dealer.

31. Within the past less than two weeks, I felt compelled to rely upon the Onondaga County Sheriff's explanation that it is lawful to sell a semi-automatic rifle to a person with a current concealed carry permit with the indicia on the face of the permit.
  - a. It is an uncomfortable feeling as an FFL to be choosing between state law and county interpretation. I am compliance-minded and only want to engage in the lawful sale of a firearm.
  - b. I've done so and now we'll find out through this lawsuit whether that transaction will have to be dialed back.
32. Getting into specifics, the "Memo" issued by the NYS Police (dated August 23, 2022)<sup>11</sup> is not a "curriculum" or an "instruction" on how-to teach live-fire training for two hours and then live-fire test.
  - a. It does not lay out the steps of selecting the proper handgun for the individual in a 1:1 ratio so that each student purchases a handgun fitted to their hand size and strength, body type, comfort level with the potential of actually using a handgun for self-defense, storage requirements, and ease of assembly/disassembly/cleaning;

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<sup>11</sup> NYS Division of Criminal Justice Services/State Police, "Minimum Standards for New York State Concealed Carry Firearm Safety Training" (Issued August 23, 2022) at <https://troopers.ny.gov/system/files/documents/2022/08/final-nysp-dcjs-minimum-standards-for-firearm-safety-training-8-23-22.pdf>. This is attached as an Exhibit to this Motion.



- b. does not require instructor proficiency in a specified range of manufacturer and model handguns;
  - c. does not require 1:1 training on each type of handgun that might be selected by the individual student;
  - d. does not require training on how to handle equipment failures such as a jammed magazine or round;
  - e. does not require disassembly and cleaning training; and,
  - f. does not require safe storage options to fit individual circumstances such as different types of vehicles.
33. The “curriculum” topics were barely described in the Defendant NYS Police “Memo” of August 23, 2022. To even develop such a curriculum, expertise is needed in multiple areas, including, but not limited to federal compliance law, state compliance law, mental health. Given the proficiencies needed to develop a standardized curriculum with associated test, it is not a surprise the curriculum and test haven’t been published by the Defendants.
34. However, with each month that goes by without the Defendants fulfilling their own legal obligations under their new laws, their violation of the fundamental Constitutional rights of New Yorkers under the Second Amendment grows more egregious.

**Impending December 5, 2022 Impact:**

**(1.) Federal Pre-Emption and Fifth Amendment Necessitated TRO**

35. I cannot, in accordance with federal law, send any of my ATF records to the NYS Police. These records are created under federal law for federal firearms compliance law purposes.

The federal laws and regulations concerning these records are a bright line: transfer of federal firearms compliance records, in whole or in part, to any third party is illegal.<sup>12</sup> Any new law from New York to the contrary is not a defense to federal fines, license suspension or revocation, or prosecution. The Court must strike down the new records laws, as quickly as possible, by December 5, 2022.

36. The Defendants give no support to FFL dealers, such as myself. For several years, I have from time-to-time, called the NYS Police to ask for specific guidance and have been told each time by the officer on the other end of the phone, “I don’t know.”

37. This time, the NYS Police and the DCJS put up a few items on the Internet, including:

- a. NYS Police/DCJS “Memo” of August 23, 2022 on the firearms training course and live-fire (submitted as an Exhibit);
- b. NYS Police “Memo” of August 27, 2022 (submitted as an Exhibit);
- c. NYS Police website page of Q&A (submitted as an Exhibit).

38. I received zero communication from any of the Defendants in advance of any effective date of any provision of any of the ten Bills passed this past summer, or, more specifically, about the dozens of new mandates complained of herein. My address and contact information are current for licensing and sales tax purposes.

39. The day-to-day reality is that I think and speak in terms of federal firearms compliance, the NICS background check system, and the ATF operators. The federal system is comprehensive and evolved over a period of decades. I remember when the 1968 Gun

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<sup>12</sup> 18 U.S.C. §926 and 28 CFR §25.11(b).

Control Act was passed and when the 1993 Brady Law was passed. The Brady Act is what ushered in the NICS background check system. Congress gave the ATF five years to design, test, and launch the NICS background check system, including security protocols, speed requirements, and records development for the ATF and the Licensees, as well as the ATF record retention and destruction policies. Congress was clear, through any Member interviewed on TV and in the news: no government registry would be created through the records, of any kind, on any level; the dealers would retain the original records.

40. The system works beautifully. There is no reason for the Defendants to push their way into the NICS background check as a middle man. The Defendants have no demonstrated capability to design or implement a consumer background check system.
41. There was no budget estimate in any of the paperwork associated with the Bills, on their websites, or in their public statements.
42. Instead, the Defendants jammed laws through on an “emergency basis,” requiring dealers to pay for the cost of starting a new background check system from scratch. The law doesn’t include any right of the dealer to pass the costs through to the customer on a per background check or a per firearms basis. Just this one blank check courtesy of the Defendants is enough reason to call it quits as a dealer. What kind of monetary liability will a NY-licensed dealer have? We’ve heard it before. Twice.
  - a. In 2000, NY Governor Pataki touted the “CoBis” system (“Combined Ballistics Identification System”) to establish a “DNA database for handguns.” It was cancelled in 2012 by NY Governor Cuomo, whose spokesperson said, “We are ending a

- program that doesn't solve crimes or make our streets safe.”<sup>13</sup> The spokesman said it cost about \$1.2 million/year, or, \$14.4 million. NYS Assemblyman Joseph Giglio said the State spent \$32 million since January 2001.<sup>14</sup>
- b. Then, as part of the 2013 “SAFE Act,” NY Governor Cuomo pushed – again on an “emergency” basis – the ammunition background check. I went to Albany and a small group of us sat down with then NYS Senator Majority Leader Skelos, and he told us the legislators didn't have the time to read what they passed in emergency session. It's a refrain we heard, personally, one-on-one, with members of the Assembly and the Senate.
- c. Now, the new laws again, wrongfully, included the very same provision included now by Defendant Gov. Hochul that the ammunition check would be requested to be run using the NICS system – a request is still illegal under federal law. Defendant Hochul publicly admits that she has no idea why the MOU was signed, she's simply “shredding it.”<sup>15</sup>
43. The NICS background check system may be used only for the single point-of-purchase check of the customer across the counter from me.<sup>16</sup> Period.

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<sup>13</sup> Dicker, Fredric, “Cuomo whacks Pataki gun law,” *New York Post* (April 2, 2012) at <https://nypost.com/2012/04/02/cuomo-whacks-pataki-gun-law/>.

<sup>14</sup> Official website, Assemblyman Joseph Giglio (AD-148), Press Release dated March 28, 2012, at <https://assembly.state.ny.us/mem/Joseph-M-Giglio/story/47130>.

<sup>15</sup> Official website of the Governor of New York, “Governor Hochul Signs Landmark Legislation to Strengthen Gun Laws and Bolster Restrictions on Concealed Carry Weapons in Response to Reckless Supreme Court Decision” (July 1, 2022) available at <https://www.governor.ny.gov/news/governor-hochul-signs-landmark-legislation-strengthen-gun-laws-and-bolster-restrictions>.

<sup>16</sup> See, 28 CFR §25.6(a) (“FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act.”) and 28 CFR §25.11(2) (penalties for unauthorized use).

- a. There are only two federal exceptions: pursuant to a warrant in a criminal case or during a routine inventory reconciliation.<sup>17</sup>
  - b. The one other scenario is when the ATF or the FBI contacts a dealer, such as myself, for a trace request, the response to which must be made by a dealer within 24-hours.<sup>18</sup>
44. What I truly cannot understand is why the Defendants refuse to participate in reporting records to the FBI to use a part of the NICS background check system. Here is the opportunity to contribute these records, for free, for no added cost, to be part of those of us who appreciate the inter-state nature of both commerce in firearms and trafficking in illegal firearms – and Defendant Hochul has the wrong mindset. Instead of appreciating this gap in federal record-keeping and analysis, Defendant Hochul brags about her intentional choice not to contribute New York crime records to the NICS.<sup>19</sup>
45. It's no different to the Defendants determination to go after law-abiding gun owners and, now, also dealers. The melody of the song is “the toughest” and “serve as a national model.” But, if the “SAFE Act” had worked, if New York City laws worked, if the new laws worked – but, they don't because they target the very segment of the population with the desire to protect themselves, their families, and their communities. This group of Defendants with these new laws is truly the worst I have experienced during the course of my multi-decade career in the firearms industry, meaning that we have arrived at a point that it is either the laws must be struck down or the industry is going to collapse in this State, me, along with it.

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<sup>17</sup> See, 18 U.S.C. §923(g)(1)(B).

<sup>18</sup> See, 18 U.S.C. §923(g)(7).

<sup>19</sup> July 1, 2022 signing ceremony, *supra*.

46. I have had no problem working with the ATF for decades. Among many other federal requirements, I use the NICS background check system for every purchase of a firearm or 100% lower receiver, as required. The system functions smoothly and quickly. The system is free to use. The ATF “800” number is answered promptly and by employees who provide answers to my questions. I work actively with the ATF to prevent the unlawful sale to a “disqualified person.”
47. The new laws contain no records security, access, retention, or destruction limitations.<sup>20</sup> The new laws will sweep up all the dealer records plus start amassing records of its own, plus giving the Governor and her agencies the power to combine firearms records with other records, for unrestricted use.<sup>21</sup> All of this is either expressly illegal under federal law<sup>22</sup> or contrary to the spirit federal law or just plain unconstitutional.

**Constitutional-Regulatory Overburden as of December 5, 2022:**

**(2.) The Details of Federal Shipping Laws and Properly Assigned Responsibilities**

48. I oppose the shift in shipping liability under the new laws, which is in direct conflict with federal law.
49. Under federal law, the shipping FFL is liable for the firearms or other, similar product, from the point of shipment through the point of delivery. The shipper determines the shipping company, makes payment to the shipper, and bears responsibility for all reporting requirements to local and federal authorities in the event a shipment is lost or stolen, and

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<sup>20</sup> See, e.g., 28 CFR §25.9, “Retention and destruction of records in the system.”

<sup>21</sup> NY Exe §228.

<sup>22</sup> See, 18 U.S.C. §926 and 28 CFR §25.11.

bears responsibility to complete the ATF Form 3310.11.<sup>23</sup>

50. Under federal law, I do not become the responsible FFL until and unless I receive and accept shipment from the transferring FFL.
51. The reason for this is quite simple: the firearm originates from the inventory and thus the A&D Book of the shipper. Only the shipping FFL has personally examined the firearm to ensure that all firearm markings are what is recorded in the A&D Book. Those markings are required to be inserted onto the Theft/Loss Report to the ATF.
52. The intended recipient FFL can and may interface with local law enforcement and federal agencies concerning the lack of receipt, but the intended recipient does not have the knowledge to swear to the markings of the firearm and the date, time, and circumstances of handing off of the shipment to the third-party carrier.<sup>24</sup> Also, the intended recipient would not know if the shipment was boxed and labeled in accordance with federal laws, which specifically prohibit the marking of a firearms container with any indication on the surface of the box of its contents.
53. Further, the shipping FFL and the ATF will then interface with the shipping company to request they complete ATF Form 3310.6, “Interstate Firearms Shipment Theft/Loss Report.” This form is completed by a non-FFL carrier. It is attached to this Motion as an Exhibit.
54. Any theft or loss is required to be reported to the ATF by the FFL within 48-hours, including notification by the shipping FFL in the event of in-transit theft or loss.<sup>25</sup>

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<sup>23</sup> See, 18 U.S.C. §923(g)(6) and 27 CFR §478.39(a).

<sup>24</sup> See, 27 CFR §478.39(a)(2).

<sup>25</sup> Again, reference to 18 U.S.C. §923(g)(6) and 27 CFR §478.39(a).

55. This is a direct conflict between federal and new state law.
56. There is no reason for the Defendants to be passing laws in direct conflict to federal firearms compliance law that is organized, intuitive, and well-established. This, and the other federal laws discussed in this Declaration, are so widely available and so regularly taught by the ATF that I can speak for myself, as well as for other dealers, when I say that we're a highly-educated industry. This may seem like a small detail, but any and every time I'm talking with other dealers, manufacturers, importers, and competition shooters – we know how the federal system is supposed to operate and we actively practice gold standard compliance. Right down to who's on lead for a shipment that doesn't arrive, we function as a team with two goals: the Second Amendment and the criminal. And we keep those as far apart as we can.

**The Impact of the New Laws:**

**Overburden and Fear**

57. Generally speaking, the new laws are administratively over-bearing for all gun shops and gun shows, whether small or large.
58. This year's Syracuse Gun Show was held September 17-18, 2022 at the NYS Fairgrounds in Syracuse. The NYS Fairgrounds appeared to constitute a "sensitive location," which caused questions, right up to the last minute, whether the gun show could even be held. The show did go off, but attendance was down by 35% to 40%. The mood among those who attended was as low as the sales.
59. Over the decades, I have participated as an FFL in many gun shows and I have attended many gun shows.



60. A gun show is a recurring event which is attended by multiple generations of family members, like me, repeatedly over the years. It is common to see grandparents, their adult children and spouses, and grandchildren of all ages in attendance. A gun show is more than firearms. It is also historical firearms dating across more than 200 years, military memorabilia, uniforms, books, gunsmithing demonstrations, an opportunity to register to vote, candidate booths and floor walks, non-profit grounds with grassroots causes, authors. It is a sharing of traditions and history. It is as common to hear talk of American history as it is to hear memories of tree stands and duck blinds.
61. I tried this year to imagine what the gun show would be like if all of the mandates were in effect, including the mandate to bar any person under the age of 18 years from the gun show. There's no way to segregate firearms and ammunition at a gun show. It's a huge open space and many dealers, myself included, sell more than just firearms or ammunition. The safest gun owner is the one who grows up around firearms. Gun shows are held on weekends because the whole family can be involved.
62. Also, what then happens to that exposure sparking young athletes of the shooting sports, like biathlon, including America's next Olympic competitors? Competition shooting is a highly-skilled and physically-demanding sport. A person doesn't simply pick up a firearm and say, "I'm going to the next winter Olympics in Milan-Cortina d'Ampezzo, Italy in biathlon." No. It takes years of training and practice, which often begins at a young age. Biathletes are elite cross-country skiers with pinpoint shooting using .22 caliber rifles. The biathlete must hit five targets with only five bullets. For each missed shot, there are penalty loops or added time. As described by Clare Egan, eleven years on the U.S.

Biathlon Team, it took seven years of changing around equipment to be satisfied with the size, shape, and material of her biathlon rifle and ski equipment.<sup>26</sup>

63. Competition shooting is about muscle memory, and muscle memory is established over the course of years, not hours. Shooting sports attract youth athletes, are offered at public schools and local rod & gun clubs, overlap with conservation activities, and merge with “farm-to-table” rephrased as “woods-to-table.” It is about learning rules, how to look that up and read it, team building at the range or walking lines to flush out game, preserving wildlife and open space from development to sustain wildlife habitation, and more.
64. The September Syracuse gun show was also the first time many people were exposed to the new laws, including around the registered purchase of ammunition and the semi-automatic rifle license.
  - a. Without a form issued by the Defendant NYS Police, myself and other dealers I talked to and observed simply wrote down the required information on a piece of paper. It raised questions from customers. Legally accurate answers from dealers were doubted, refuted, and found to be unsatisfactory by customers. There was a general air of disbelief to almost distrust. There’s no history of ammunition registries, ammunition background checks, or ammunition acquisition and disposition records. It should not be required.
  - b. Likewise, there was disbelief to the point of dead-end disagreement whether there was a new semi-automatic license requirement, or not, and how to obtain it. Neither I, nor anyone else, had ever heard of such a thing in New York or as a historical

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<sup>26</sup> McCusker, Carrie, “A Peek into Biathlon Training with US Olympian Clare Egan,” for TrainingPeaks.com at <https://www.trainingpeaks.com/blog/biathlon-training-clare-egan/>.

matter. Even the “SAFE Act” only went after one type of rifle when accessorized and then required registration, modification, or disposal. Confusion was also already underfoot because word was going around that counties could and would accept a concealed carry permit holder to use that license to add the SAR. Reading the plain language of the new laws, this does not appear correct to me. I am not willing to risk criminal charges. It was immediately apparent that multiple dealers had only brought wood stock rifles and shotguns to the gun show as their work-around.

- c. And it wasn’t the Defendants who were there. It was FFL dealers, manufacturers, and gunsmiths. It was us, in the same position we are in on a daily basis when a customer is held by us to the requirements of a legal firearms purchase.

65. I say all of this, and there’s still a long list of additional provisions, all of which I oppose and request be stopped. Summarily for purposes of this “Declaration,” I bullet point:

- a. Storage in safes I cannot accomplish at my premises due to both space and weight, even if I were to purchase the two safes for approximately \$2,500 I estimate it would take to house my inventory. In addition, without further guidance, what is meant by a “safe” for purposes of a dealer versus a consumer? Would my rating, gauge, and number of locking bars be adequate in the event I was charged?
- b. Security cameras inside and outside at every point of entry and exit of my premises would equal 18 windows plus 4 doors plus 1 overhead door, relative to the one room where customer meetings take place for added motion and sound detection.
  - i. I do use a third-party security company for household security, generally, but not to the level what I believe the statute calls for and my best guess at what the additional required guidance from Defendant NYS Police will call for.

- ii. The monthly charge from ADT for the home monitoring service is \$40/month.
- c. Video surveillance 24/7 on two separate hard drives for at least two years? I have one point of sale and I am the only person who conducts customer sales. I am not willing to hire a third-party “security” company as defined by the Defendants to give them access to my home and business premises, to install a video system, to have remote access to that video system, and to store and monitor video inside my home and business with a two-year retention period. Ring doorbells are notoriously hacked. Baby monitors are hacked. How is it safer to allow a person under 21, who may be a “disqualified person” because of having a criminal record and being ineligible to buy a gun, now have a blueprint to target my home?
- d. Training for me in federal and state laws, including straw purchases – not even released by the Defendants. But, just to one detail, given the Defendants’ track record with the ATF and the FBI and federal firearms compliance law, how are they going to develop “training materials?” I am decades ahead of them, work actively with the ATF, my local Sheriff’s Department and law enforcement officers, read materials from the ATF, talk to multiple lawyers with my questions, stay abreast of federal litigation and attend federal courthouse proceedings, and more. And if the same is delegated to third-party vendors to perform, at what cost? Every mandatory expense has to be accounted for in the costs and income of the business. It’s not just this one item, adding, e.g., \$1,000 in a new regulation, singularly, on an annual basis, for me to factor in to next year’s pricing and/or as against my income from the business. This one is just part of a long list.

- e. Restriction against someone under 18 years from entering the inventory/display/sales area is impossible. The law made no exception for family members and friends moving naturally about in the house. And how do you know the legal status of an adult and child, for example, in the gun show setting? One would have to card everyone at the door, as well as demanding proof by way of birth certificates and court orders with also some way to ascertain whether court orders were current and not superseded by some other court order, to say nothing of how the gun show, or me at my booth, would have to respond to any order saying “Temporary” on it.
66. I can’t make sense of the new laws. We get nothing from the Defendants to meet their responsibilities. What we’re looking at is unfeasible.
67. The Second Amendment is a precious right. The Defendants are tossing things on top of it, hoping it will collapse. This is the tipping point and judicial action is needed.

### **The Out-of-Business Scenario**

68. If none of the new laws can be stopped, I will be forced to go out of business. There is no way to reconcile the federal prohibitions and the new mandates, particularly for sending record copies to the Defendant NYS Police and to providing unfettered access to the Defendant NYSP and other government employees, along with totally unprecedented access by manufacturers. Defendants Gov. Hochul and AG James are in the midst of their publicized campaign to sue gun manufacturers<sup>27</sup> and have just last Summer done a round

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<sup>27</sup> Recently, see Press Release “Attorney General James Demands National Gun Distributors Immediately Stop Selling and Bringing Illegal Ghost Gun Parts into New York” (July 14, 2022) on the official website of Letitia James, NY Attorney General at <https://ag.ny.gov/press-release/2022/attorney-general-james-demands-national-gun-distributors-immediately-stop-selling>. Coverage widely available on the Internet includes the New York Times, The Hill, Spectrum News, ABC,

of touting the defeat of gun manufacturers in a Northern District Court case before the Hon. Mae D’Agostino<sup>28</sup>, but now the Defendants give manufacturers an unprecedented right to access the A&D records of dealers to turn manufacturers into agents of the State?

69. Finally, I will shut down my business before my wife and I will be forced to move out of state. Our adult children and our granddaughter are here. We are from here. My wife has spent her career in nursing at Crouse Memorial Hospital, and is still very active with her colleagues. There’s no point in going further with the list. It’s a choice people we know have made. It is not a consideration for us, but to even be put in the situation of having to consider these options is what tells me I have to stand and fight with the co-plaintiffs for all of our constitutional rights.

#### **A Final Word on the Politics of Guns in Albany.**

70. In August 2022, after the 10-Bill package was signed by Defendant Gov. Hochul, having been rushed through at her request, I took time to really listen to the swirl of words. In the chaos was the voice of NYS Assembly Minority Leader Will Barclay (AD-120, including parts of Onondaga, Oswego, and Jefferson Counties). Barclay dialed in to “...the fact that sportsmen organizations and clubs were lumped into the legislation passed earlier this

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Bloomberg.com, NY Daily News, CNN, NBC, CBS, Reuters, NY Post, Buffalo News, Newsday, Finger Lakes Daily News, Forbes, and more.

<sup>28</sup> *National Shooting Sports Foundation v. James*, NDNY 1:21-cv-1348. See Press Release “Attorney General James Successfully Defends New York’s Right to Hold Gun Manufacturers Responsible for Gun Violence” (May 25, 2022) on the official website of Letitia James, NY Attorney General at <https://ag.ny.gov/press-release/2022/attorney-general-james-successfully-defends-new-yorks-right-to-hold-gun>. See, also, national and local coverage available on the Internet.

summer...” and he said “Sport shooting and target practice facilities should be exempt from being designed as a ‘sensitive location.’”<sup>28</sup> And that voice was snuffed as soon as it was raised. If not even youth shooting sports has a champion in Albany who can protect that heritage and that future, what chance do I have as a dealer in firearms to protect my role?

72. The answer will only come from the Court. Unless the Court is willing to issue an injunction, our industry does not stand a chance against these Defendants.

Dated: November 07, 2022

A handwritten signature in dark ink, appearing to read "Michael Mastrogiovanni", is written over a horizontal line.

Michael Mastrogiovanni, individually  
and as Sole Proprietor of “Spur Shooters Supply,”  
an FFL-01, Dealer in Firearms

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<sup>28</sup> Reisman, Nick, “Assembly Republicans want to protect shooting sports in school,” Spectrum News (August 26, 2022) at <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/08/26/assembly-republicans-want-to-protecting-shooting-sports->.